

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
v.)	
)	
JAY JAMES JACKSON,)	
KATHLEEN M. JACKSON, and)	
JACKSON SERVICES, INC.,)	
)	
Defendants.)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency, files this Complaint and alleges as follows:

INTRODUCTION

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a). The United States seeks to recover response costs incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances at or from Operable Unit No. 1 (“OU1”) of the 10th Street Superfund Site (the “Site”), located in Columbus, Platte County Nebraska.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

DEFENDANTS

4. Defendant Jay James Jackson (“Jay Jackson”) is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant Kathleen M. Jackson (“Kathleen Jackson”) is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant Jackson Services, Inc. (“Jackson Services”) was incorporated in May of 1977 in Nebraska under the name Jackson Fine Linens, Inc. The name of the corporation was later changed to Jackson Services, Inc. in March of 1984. Jackson Services is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

THE SITE

7. The 10th Street Superfund Site is located in the south-central portion of the City of Columbus in Platte County, Nebraska. Since about 1984, hazardous substances including trichloroethylene (TCE) and tetrachloroethylene (also called perchloroethylene, or PCE) have been detected in the groundwater and municipal drinking water wells at the Site. Since about 1988, hazardous substances including TCE and PCE have been detected in the soils at the Site.

8. The 10th Street Site was placed on the National Priorities List on August 30, 1990. See 55 Fed. Reg. 35502, 35512 (Aug. 30, 1990); 40 C.F.R. Part 300, Appendix B. The National Priorities List is a national list of hazardous waste sites posing the greatest threat to health, welfare and the environment. The National Priorities List has been established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

9. EPA has divided the Site into two Operable Units known as Operable Unit 1 (“OU1”) and Operable Unit 2 (“OU2”). OU1, which is the subject of this Complaint, consists of contamination located at and around the property on which Defendants’ dry cleaning establishment was located as well as the contaminated soil, groundwater and municipal wells in the area surrounding that property. OU2 primarily covers an area located north of OU1 and includes a groundwater contamination plume originating in that area.

10. From 1990 to 1992, EPA conducted a Remedial Investigation and Feasibility Study (“RI/FS”) at OU1 of the Site. The RI/FS indicated that the soil and groundwater at the Site are contaminated with TCE and PCE. This contamination was also detected in municipal wells located in OU1 at the Site.

11. In February of 1995, EPA issued a Record of Decision (ROD) which called for groundwater monitoring and institutional controls as the selected remedy with a contingency for extraction and discharge to the Loup River if the groundwater monitoring results indicated unacceptable risks.

12. As a result of the releases or threatened releases of hazardous substances at or from OU1 of the Site, the United States has incurred and will continue to incur response costs within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). As of March 7, 2001, such costs amounted to approximately \$2.6 million. To date, none of these costs have been reimbursed to the United States by Defendants.

LAW GOVERNING CLAIMS FOR RELIEF UNDER SECTION 107 OF CERCLA

13. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of such hazardous substance.

14. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA pursuant to Section 2(e) of Executive Order No. 12,580, 52 Fed. Reg. 2,923 (Jan. 23, 1987), as amended by Exec. Order No. 12,777, 56 Fed. Reg. 54,757 (Oct. 18, 1991) and Exec. Order No. 13,016, 61 Fed. Reg. 45,871 (Aug. 28, 1996), reprinted in 42 U.S.C.A. § 9615 at 340-46 (West 1995).

15. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:
“Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan”

16. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides:
“In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

FACTS RELEVANT TO LIABILITY OF
DEFENDANTS UNDER SECTION 107 OF CERCLA

17. From 1959 to 1971, and from at least May of 1977 to the present Defendant Jay Jackson has had an ownership interest in property located at 960 24th Avenue in OU1 of the Site.

18. From at least May of 1977 to the present Defendant Kathleen Jackson has had an ownership interest in the 960 24th Avenue property.

19. From 1959 to 1988 the property located at 960 24th Avenue was used as a dry cleaning business by various members of Defendant Jay Jackson's family (hereinafter the "Jackson dry cleaning business").

20. From about December of 1975 until August 1, 1988 Defendant Jay Jackson operated the Jackson dry cleaning business.

21. From May of 1977 to August of 1988, Defendant Jackson Services operated the Jackson dry cleaning business located at 960 24th Avenue.

22. Defendant Jackson Services is the successor in interest to the prior owners and operators of the Jackson dry cleaning business.

23. The Jackson dry cleaning business used chemicals containing PCE in the dry cleaning process it conducted. TCE is created in the breakdown of PCE. PCE and TCE are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Disposals and releases of chemicals containing PCE occurred at and/or from the Jackson dry cleaning business.

25. Soil and groundwater sampling conducted by EPA at and around the Jackson dry cleaning business has identified said business as a source of PCE and TCE contamination of the soil, groundwater and the municipal water supply wells in OU1 of the Site.

GENERAL ALLEGATIONS

26. The 10th Street Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The property located at 960 24th Avenue and formerly

occupied by the Jackson dry cleaning business is also a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. There are and were, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), releases and threatened releases of hazardous substances into the environment at and from OU1 of the Site.

28. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been treated, stored, or disposed of at the Site. Such hazardous substances have been found at OU1 of the Site.

29. As a result of the releases or threatened releases at or from the Site, the United States has incurred “response” costs as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the releases or threatened releases at or from OU1 of the Site. The United States will continue to incur response costs in connection with OU1 of the Site.

30. As a result of such response actions, as of March 7, 2001, the United States had incurred approximately \$2.6 million in costs with respect to OU1 of the Site and expects to incur additional response costs at the Site. The Defendants have not fully reimbursed the United States for these response costs.

31. The response costs incurred by the United States in connection with OU1 of the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF:
OWNER LIABILITY CLAIM AGAINST JAY JACKSON
UNDER SECTION 107(a)(1) OF CERCLA

32. Paragraphs 1 through 31 are realleged and incorporated herein by reference.

33. Defendant Jay Jackson is the current owner of a facility at OU1 of the Site from which a release of hazardous substances has occurred.

34. Defendant Jay Jackson is therefore jointly and severally liable, under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), for all costs incurred by the United States in response to releases of hazardous substances at OU1 of the Site.

35. Defendant Jay Jackson has not fully reimbursed the United States for the costs incurred in responding to the releases of hazardous substances at OU1 of the Site.

SECOND CLAIM FOR RELIEF:
OWNER LIABILITY CLAIM AGAINST KATHLEEN JACKSON
UNDER SECTION 107(a)(1) OF CERCLA

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. Defendant Kathleen Jackson is the current owner of a facility at OU1 of the Site from which a release of hazardous substances has occurred.

38. Defendant Kathleen Jackson is therefore jointly and severally liable, under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), for all costs incurred by the United States in response to the releases of hazardous substances at OU1 of the Site.

39. Defendant Kathleen Jackson has not fully reimbursed the United States for the costs incurred in responding to the releases of hazardous substances at OU1 of the Site.

THIRD CLAIM FOR RELIEF:
OPERATOR LIABILITY AGAINST JACKSON SERVICES, INC.
UNDER SECTION 107(a)(2) OF CERCLA

40. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. Jackson Services operated the Jackson dry cleaning business from 1977 to 1988 and is the successor in interest to the preceding owners and operators of the Jackson dry cleaning business.

42. Disposals of hazardous substances occurred during the time the Jackson dry cleaning business was operated by Jackson Services and/or its predecessors in interest.

43. Defendant Jackson Services is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all costs incurred by the United States in response to releases of hazardous substances at OU1 of the Site.

44. Defendant Jackson Services has not fully reimbursed the United States for the costs incurred in responding to the release of hazardous substances at OU1 of the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Enter judgment against Defendants, jointly and severally, for all costs incurred by the United States in response to releases or threatened releases of hazardous substances at OU1 of the Site;
2. Award the United States prejudgment interest on its response costs;
3. Enter a declaratory judgment against Defendants pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), jointly and severally, for all future response costs to be incurred by the United States in connection with OU1 of the Site; and
4. Grant such other relief as the Court deems appropriate.

REQUEST FOR PLACE OF TRIAL

The United States of America hereby requests that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Respectfully submitted,

CATHERINE R. McCABE¹

¹ Note to Clerk's Office: Ms. McCabe does not wish to receive ECF notice in this case.

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² Note to Clerk's Office: Mr. Braeckel does not wish to receive ECF notice in this case.